

# **THE NATIONAL MUSIC BILL 2016**

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# THE NATIONAL MUSIC BILL, 2016

## A Bill for

An Act of Parliament, to provide for the development, management, promotion and regulation of the music industry and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

### PART I – PRELIMINARY

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| Short Title and commencement | <b>1.</b> This Act may be cited as the National Music Act, 2016 and shall come into force on such a date as the Cabinet Secretary may, by notice in the <i>Gazette</i> , appoint.                          |
| Interpretation               | <b>2.</b> In this Act unless the context otherwise requires —  |
|                              | “ <b>Academy</b> ” means the Kenya Music Talent Academy established under section 43;  |
| <i>Cap. 130</i>              | “ <b>audio visual recording</b> ” has the meaning assigned to it under section 2 of the Copyright Act;   |
|                              | “ <b>Cabinet Secretary</b> ” means the Cabinet Secretary for the time being responsible for matters relating to music;   |
|                              | “ <b>Chairperson</b> ” means the chairperson of the Council appointed under section 5;   |
| <i>Cap. 130</i>              | “ <b>Competent Authority</b> ” has the meaning assigned to it under section 48 of the Copyright Act;   |
|                              | “ <b>compliance officer</b> ” means a music compliance officer appointed under section 34;   |
| <i>Cap. 411A</i>             | “ <b>Communications Authority of Kenya</b> ” means the Communications Authority of Kenya established under section 3 of the Kenya Information and Communications Act;                                      |
|                              | “ <b>Council</b> ” means the National Music Council established under section 4;   |
| <i>No. 2 of 2013.</i>        | “ <b>Director of Public Prosecutions</b> ” means the Director of Public Prosecutions appointed in accordance with Article 157(2) of the Constitution and section 8 of the Office of the Director of Public |

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|                 | Prosecutions Act, 2013;   |
|                 | <b>“Fund”</b> means the National Music Fund established under section 38;   |
|                 | <b>“federation”</b> means a federation of music associations;   |
| <i>Cap. 130</i> | <b>“Kenya Copyright Board”</b> means the Kenya Copyright Board established under section 3 of the Copyright Act;  |
|                 | <b>“music”</b> refers to the use of sound to express and reflect ideas, attitudes and emotions, collectively and individually, in acknowledged for a. It embraces traditional and contemporary idioms of sacred and secular genres of song and instrumental expression; |
|                 | <b>“musical work”</b> has the meaning assigned to it under the Copyright Act;   |
|                 | <b>“music association”</b> means an association representing the interests of practitioners in the music industry;  |
|                 | <b>“music educator”</b> means a person or persons involved in the dissemination of music by providing instruction, either in public or private institutions or in their individual capacities;  |
|                 | <b>“musician”</b> means a person who performs or composes music;  |
|                 | <b>“music merchant”</b> means a person involved in the sale of music products or offering support services to the music industry;   |
|                 | <b>“music sale business”</b> means the sale of —<br>a) music whether in the form of sound recording or audio visual work embedded on a record or digital platform; or<br>b) blank media, music accessories or equipment;  |
|                 | <b>“Permanent Presidential Music Commission”</b> means the Permanent Presidential Music Commission established under Executive Order No. 1 of 1988;   |
|                 | <b>“performance period”</b> in reference to broadcasting of music means the period between 06h00 and 10h00;   |
|                 | <b>“practitioner”</b> with reference to the music industry means a music educator, musician, rights holder or music merchant;   |
| <i>Cap. 130</i> | <b>“record”</b> has the meaning assigned to it under section 35(13) of the  |

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|                              | Copyright Act;  |
| <i>Cap. 130</i>              | <b>“rights holder”</b> means a person who holds a right recognized under the Copyright Act;   |
| <i>Cap. 130</i>              | <b>“sound recording”</b> has the meaning assigned to it under section 2 of the Copyright Act;   |
|                              | <b>“Tribunal”</b> means the National Music Tribunal established under section 49.   |
| Purpose of the Act           | <p><b>3.</b> The purpose of the Act is to —</p> <ul style="list-style-type: none"> <li>(1) facilitate the development, management, promotion and regulation of the music industry;</li> <li>(2) safeguard the intellectual property rights of practitioners in the music industry;</li> <li>(3) protect and promote music rights and the economic well-being of practitioners in music industry; and</li> <li>(4) set music standards and ensure compliance of the same within the music industry.</li> </ul>   |
|                              | <b>PART II – ESTABLISHMENT OF THE NATIONAL MUSIC COUNCIL</b>  |
| Establishment of the Council | <p><b>4.</b> (1) There is established a Council to be known as the National Music Council.</p> <p>(2) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of —</p> <ul style="list-style-type: none"> <li>(a) suing and being sued;</li> <li>(b) purchasing or otherwise acquiring, holding, leasing, charging or disposing of movable and immovable property;</li> <li>(c) entering into contracts;</li> <li>(d) borrowing, lending or investing money; and</li> <li>(e) doing or performing all such other things or acts which may be lawfully done or performed by a body corporate.</li> </ul> |
| Board of the Council         | <p><b>5.</b> (1)The Council shall be governed by a Board consisting of the following members —</p> <ul style="list-style-type: none"> <li>(a) a chairperson appointed by the President;</li> <li>(b) the principal secretary responsible for matters relating to music or his representative;</li> <li>(c) the principal secretary responsible for finance or his representative;</li> </ul>  |

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|                                       | <p>(d) the Director-General of the Communications Authority of Kenya or his representative;</p> <p>(e) the director of the Permanent Presidential Music Commission;</p> <p>(f) the following members appointed by the Cabinet Secretary-</p> <p style="padding-left: 40px;">(i) one representative from the federation of music educators;</p> <p style="padding-left: 40px;">(ii) two representatives from the federation of musicians and rights holders;</p> <p style="padding-left: 40px;">(iii) one representative from the federation of music merchants;</p> <p>(g) the chief executive officer of the Council.</p> <p>(2) The term of office of a member of the Board appointed under sub section 1(f) shall be three years and may be renewed for a further one term of three years.</p> <p>(3) The Council may co-opt, no more than two members, for such period as may be necessary to complete the purpose of such co-option, but in any event the co-opted members term shall not exceed the term of the Council.</p> |
| <p>Qualifications for appointment</p> | <p><b>6.</b> (1) A person shall be qualified for appointment as Chairperson of the Council if that person —</p> <p style="padding-left: 40px;">(a) is a Kenyan citizen;</p> <p style="padding-left: 40px;">(b) holds a degree from a recognized university;</p> <p style="padding-left: 40px;">(c) is a practitioner with a distinguished career in the music industry;</p> <p style="padding-left: 40px;">(d) complies with the provisions of chapter six of the Constitution.</p> <p>(2) A person qualifies for appointment as a member of the Board if that person —</p> <p style="padding-left: 40px;">(a) is a Kenyan citizen; and</p> <p style="padding-left: 40px;">(b) complies with the provisions of chapter six of the Constitution.</p>  |
| <p>Disqualification</p>               | <p><b>7.</b> A person shall not qualify for appointment as a Chairperson or as a member of the Board if the person —</p> <p style="padding-left: 40px;">(a) is an undischarged bankrupt;</p> <p style="padding-left: 40px;">(b) has been convicted of a criminal offence and term of more than six months imprisonment or to a fine exceeding ten thousand shillings;</p> <p style="padding-left: 40px;">(c) has been removed from public office for contravening the provisions of the Constitution or any written law;</p>   |

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|                             | <p>(d) holds office in a political party; or</p> <p>(e) is a member of Parliament or county assembly.</p>   |
| Vacancy of office           | <p><b>8.</b> The office of the Chairperson or a member of the Board shall become vacant if the holder —</p> <p>(a) resigns from office by notice in writing to the appointing authority;</p> <p>(b) is removed from office for any of the following grounds—</p> <p>(i) has been absent, without the permission of the Chairperson, from three consecutive meetings of the Council of which he has received notice;</p> <p>(ii) is adjudged bankrupt;</p> <p>(iii) is convicted of an offence involving moral turpitude or corruption;</p> <p>(iv) if in the opinion of the Council, he by reason of prolonged physical or mental illness or otherwise becomes unfit to discharge his or her duties as a member of the Council; or</p> <p>(v) gross misconduct or misbehavior.</p> <p>(c) dies; or</p> <p>(d) term of office expires.</p> |
| Remuneration and allowances | <p><b>9.</b> The members of the Board and members of staff of the Council shall be paid such remuneration as the Cabinet Secretary may on the advice of the Salaries and Remuneration Commission determine.</p>   |
| Delegation by the council   | <p><b>10.</b> The Council may by resolution either generally or in any particular case delegate to any committee of the Board the exercise of any powers or the performance of any of the functions or duties of the Council under this Act.</p>  |
| Functions of the Council    | <p><b>11.</b> The functions of the Council shall be to —</p> <p>(a) support the development of music in Kenya as an instrument of creativity, entertainment, promotion of diversity and national values;</p> <p>(b) support, protect and promote music rights and the freedom of artistic creativity;</p> <p>(c) provide policy advice to Government on matters relating to music;</p> <p>(d) promote fair business practices by advising music industry stakeholders on fair terms of contractual engagement and developing template contractual documents;</p> <p>(e) consult with other Government bodies on the formulation and implementation of an incentive scheme suitable for the music</p>  |



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|                       | <p>industry from time to time;</p> <ul style="list-style-type: none"> <li>(f) establish and maintain databases for music associations, practitioners and musical works;</li> <li>(g) license persons operating music sale businesses within Kenya;</li> <li>(h) monitoring music content broadcast within Kenya and maintaining logs thereof;</li> <li>(i) facilitate the participation of Kenyan artistes in various international musical events and the hosting of similar events in Kenya;</li> <li>(j) establish and operate a national awards programme to recognize and award talent and artistic creativity in the music industry;</li> <li>(k) to facilitate strategic partnerships at international, regional, national and county levels; and</li> <li>(l) perform such other functions as may be from time to time be assigned within the law.</li> </ul>   |
| Powers of the Council | <p><b>12.</b> (1) The Council shall have all the powers necessary for the proper performance of its functions under this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), the Council shall have the power to —</p> <ul style="list-style-type: none"> <li>(a) manage and control its assets in such manner and for such purposes as best promote the purpose for which the Council is established;</li> <li>(b) determine the provisions to be made for its capital and recurrent expenditure and for the reserves of the Council;</li> <li>(c) source for and receive any grants, gifts, donations or endowments and make legitimate disbursements there from;</li> <li>(d) harness resources both within and without the industry for the sustainable development of the industry;</li> <li>(e) open such bank accounts for its funds as may be necessary;</li> <li>(f) invest any funds of the Council not immediately required for its purposes;</li> <li>(g) impose levies fees, and charges;</li> <li>(h) recruit, remunerate, retain, guide, support, discipline, dismiss and determine the terms of employment of the staff;</li> <li>(i) establish and run offices across the country;</li> <li>(j) enter into association with content monitoring bodies or organizations for the purposes of monitoring compliance with this Act;</li> <li>(k) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Council is established;</li> </ul> |

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|  | <p>(l) facilitate strategic partnerships at international, regional, national and county levels; and</p> <p>(m) undertake any other activity necessary for the fulfillment of any of its functions.</p>   |
| Conduct of business and affairs of the Council | <p><b>13.</b> (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the First Schedule but subject thereto, the Council shall regulate its own procedure.</p> <p>(2) The Council may invite any person to participate in its deliberations but a person so invited shall have no right to vote.</p>   |
| Secretary to the Council                       | <p><b>14.</b> (1) There shall be a Chief Executive Officer of the Council appointed by the Council through a competitive recruitment process.</p> <p>(2) The Chief Executive Officer shall hold office for a term of three years renewable only once and on such terms and conditions of employment as the council may determine.</p> <p>(3) The Chief Executive Officer shall be an <i>ex-officio</i> member of the Council but shall have no right to vote at any meeting of the Council.</p> <p>(4) The Chief Executive Officer shall —</p> <ul style="list-style-type: none"> <li>(a) subject to the direction of the Council, be responsible for the day to day management of the Council;</li> <li>(b) in consultation with the Council, be responsible for the direction of the affairs and transactions of the Council, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Council;</li> <li>(c) be the secretary of the Council; and</li> <li>(d) perform such other duties as may be assigned by the Council from time to time.</li> </ul> <p>(5) A person shall not qualify for appointment as Chief Executive Officer under subsection (1) unless such person —</p> <ul style="list-style-type: none"> <li>(a) is a Kenyan citizen;</li> <li>(b) has a degree from a recognized university;</li> <li>(c) has not less than 5 years experience in corporate management; and</li> <li>(d) meets the requirements of Chapter Six of the Constitution.</li> </ul> |
| Staff of the Council                           | <p><b>15.</b> (1) There shall be a secretariat of the Council that shall be headed by the Chief Executive Officer.</p>  |

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|   | <p>(2) The secretariat shall comprise of such professional, technical and administrative officers and support staff, as may be appointed by the Council in the discharge of its functions under this Act.</p> <p>(3) The Council shall ensure that in the appointment of employees, not more than two-thirds of the employees of the Council shall be of the same gender and that the following are also taken into account—</p> <ol style="list-style-type: none"> <li>(a) persons with disabilities; and</li> <li>(b) regional and other diversity of the people of Kenya.</li> </ol>   |
| Organization of the Council                     | <p><b>16.</b> (1) The Council may create within itself such directorates, offices, units, divisions or committees and appoint thereto such employees as it may determine for the better carrying out of its functions under this Act.</p> <p>(2) Every directorate, office, unit, division or committee created by the Council shall act in accordance with the mandate approved by this Act or by the Council and directives given in writing by the Chief Executive Officer.</p>  |
|   | <b>PART III – LICENSING OF MUSIC SALE BUSINESS</b>  |
| Restriction in carrying out music sale business | <p><b>17.</b> (1) No person shall operate a music sale business in Kenya unless that person is a holder of a current license issued by the Council for that purpose.</p> <p>(2) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any license granted under this Act for that purpose commits an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings but not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.</p>   |
| Application for a license                       | <p><b>18.</b> (1) Every person intending to operate a music sale business shall before commencing such business, apply in writing to the Council.</p> <p>(2) The application under subsection (1) shall be through the prescribed format and accompanied by the prescribed application fee.</p> <p>(3) The application under subsection (1) shall state the applicant's trade name, type of trade, physical address, email address, internet domain name, phone numbers and such other details as may be required by the Council from time to time.</p> <p>(4)The Council shall not issue or renew a license under this Act unless it is satisfied that —</p> |

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|  | <p>(a) the applicant does not have any civil case or criminal charge related to infringement of rights protected under this Act or any written law relating to intellectual property rights; and</p> <p>(b) the applicant has sufficient knowledge and capacity to enable him conduct legal business without infringing on music rights and other intellectual property rights protected under this Act or any written law.</p>   |
| Expiry and Renewal of license            | <p><b>19.</b> (1) Every license shall, unless earlier revoked expire on the 31st December of the year issued.</p> <p>(2) An application for the renewal of a license shall be made to the Council not later than the 30th November in the year in which the current license is due to expire.</p>   |
| Revocation of licence                    | <p><b>20.</b> The Council may, by notice in writing to the person, revoke a licence if the person —</p> <p>(a) ceases to carry on business in Kenya or goes into liquidation or is wound up or is otherwise dissolved; or</p> <p>(b) fails to comply with this Act or any rules, regulations, orders or directions issued under this Act or any condition of a licence.</p>   |
| <b>PART IV – INDUSTRY REPRESENTATION</b> |   |
| Practitioners' freedom of association    | <p><b>21.</b> (1) Every practitioner has the right to —</p> <p>(a) participate in forming a music association or federation of music associations;</p> <p>(b) join a music association; or</p> <p>(c) leave a music association or a federation of music associations.</p> <p>(2) Every member of a music association has the right, subject to the constitution of that music association to—</p> <p>(a) participate in its lawful activities;</p> <p>(b) participate in the election of its officials and representatives;</p> <p>(c) stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and</p> <p>(d) stand for election or seek for appointment as a music association representative and, if elected or appointed, to carry out the functions of a music association representative in accordance with the provisions of this Act.</p> <p>(3) Every member of a music association that is a member of a federation of music associations has the right, subject to the constitution of that federation to —</p> <p>(a) participate in its lawful activities;</p> <p>(b) participate in the election of any of its office bearers or</p> |

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|   | <p>officials;</p> <p>(c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office; and</p> <p>(d) stand for election or seek for appointment as a federation representative and, if elected or appointed, to carry out the functions of a federation representative in accordance with the provisions of this Act.</p>   |
| Rights of music associations etc              | <p><b>22.</b> Every music association or federation of music associations has subject to the provisions of this Act, the right to —</p> <p>(a) determine its own constitution and rules and elect its own officials;</p> <p>(b) plan and organize its administration and lawful activities;</p> <p>(c) participate in forming a federation of music associations; and</p> <p>(d) join a federation of music associations subject to its constitution, and to participate in its lawful activities.</p>  |
| Classification of music associations in Kenya | <p><b>23.</b> All music associations in Kenya are classified as either —</p> <p>(a) associations of music educators;</p> <p>(b) associations of musicians and rights holders; or</p> <p>(c) associations of music merchants.</p>  |
| Formation of federation of music associations | <p><b>24.</b> (1) At the commencement of this Act and for the purpose of orderly representation of the music industry —</p> <p>(a) all associations of music educators registered in Kenya shall jointly form one federation of music educators;</p> <p>(b) all associations of musicians and rights holders registered in Kenya shall jointly form one federation of musicians and rights holders; and</p> <p>(c) all associations of music merchants registered in Kenya shall jointly form one federation of music merchants.</p> <p>(2) The federations of music associations provided for under subsection (1) shall be registered under the law in force in Kenya regulating the registration and control of societies.</p> |

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| <p>Requirement for registering a federation with the Council</p> <p><i>Cap. 108</i></p> | <p><b>25.</b> (1) Upon registration under the Societies Act, the promoters of a federation shall apply for its registration with the Council.</p> <p>(2) The requirements for registration of a federation with the Council are —</p> <ul style="list-style-type: none"> <li>(a) evidence of registration with under the Societies Act;</li> <li>(b) the federation has adopted a constitution that complies with the provision of this Act;</li> <li>(c) the federation has a physical address and valid contacts in Kenya;</li> <li>(d) the constitution of the federation states that its members are registered music associations only; and</li> <li>(e) the name of the federation is not the same as one of an existing music association or federation or sufficiently similar so as to mislead or cause confusion.</li> </ul> |
| <p>Application for Registration</p>   | <p><b>26.</b> (1) An application to register a music association or a federation of music associations shall be made to the Council in the prescribed format, accompanied by —</p> <ul style="list-style-type: none"> <li>(a) the prescribed fee;</li> <li>(b) a certified copy of the constitution and certificate of registration.</li> </ul> <p>(2) The Council may —</p> <ul style="list-style-type: none"> <li>(a) call for further particulars for the purpose of evaluating the application for registration; or</li> <li>(b) give an applicant for registration an opportunity to rectify the application within a period specified by the Council.</li> </ul>   |
| <p>Registration of a music associations</p>   | <p><b>27.</b> (1) If the Council is satisfied that a music association or a federation of music associations that has applied for registration meets the requirements of the Act, the Council shall register that music association or federation and shall —</p> <ul style="list-style-type: none"> <li>(a) issue a certificate of registration in the prescribed format; and</li> <li>(b) enter the name and details of the music association or federation of music association in the appropriate register.</li> </ul>   |
| <p>Gazettement of federation of music associations</p>                                  | <p><b>28.</b> (1) The Cabinet Secretary shall, upon recommendation by the Council, and by notice in the Gazette designate a federation of music associations registered by the Council as the official representative of the interests of its class of industry practitioners.</p> <p>(2) Where more than one federation have been registered for a particular class of industry practitioners the Cabinet Secretary shall upon recommendation of the Council gazette the most representative of the federations as the official representative of the interests of its</p>  |

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|                                     | class of industry practitioners.  |
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|                                     | <b>PART V – BROADCAST AND PUBLIC PERFORMANCE OF KENYAN MUSIC</b>  |
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| Kenyan Music in Broadcast`          | <p><b>29.</b> (1) At least sixty per centum of time allocated by a non vernacular broadcasting station duly licensed to broadcast in Kenya, in the broadcasting of music shall be devoted to the broadcasting of Kenyan music.</p> <p>(2) At least thirty per centum of time allocated by a vernacular broadcasting station duly licensed to broadcast in Kenya, in the broadcasting of music shall be devoted to the broadcasting of music from Kenyan communities other than the community whose vernacular the station broadcasts in.</p> <p>(3) The quotas of Kenyan and community music prescribed under subsections (1) and (2) above shall be evenly distributed and exhausted within the performance period of any given day.</p> <p>(4) Any broadcasting station that contravenes this section commits an offence and shall upon conviction be liable to pay a fine not exceeding five million Kenya shillings for every month or part thereof that the contravention continues.</p> |
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| Kenyan Music in Public Institutions | <b>30.</b> All public institutions and public airports shall ensure that music performed from their points of control is Kenyan music.  |
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| Records of music quotas             | <p><b>31.</b> (1) A broadcasting station duly licensed to broadcast in Kenya shall keep and maintain logs, statistical forms and programme records containing —</p> <p>(a) the particulars of —</p> <ol style="list-style-type: none"> <li>i. the percentages of Kenyan music or community music broadcast including quota calculations in the performance period; and</li> <li>ii. the time and duration of every such compliant broadcast.</li> </ol> <p>(b) Such other particulars as may be required by the Council.</p> <p>(2) The logs, statistical forms and records contemplated in sub - section (1) shall be preserved for a period of not less than twelve months after the date of last entry.</p>  |
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| Kenyan music, meaning               | <p><b>32.</b> For the purpose of this Part, “<b>Kenyan music</b>” means —</p> <p>(a) music performed or composed by a Kenyan citizen or a person who ordinarily resides in Kenya; and</p>   |

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|  | (b) includes a collaboration between a Kenyan citizen or a person who ordinarily resides in Kenya and a foreigner.  |
|  | <b>PART VI – MONITORING AND ENFORCEMENT</b>   |
| Power to request for information, documents, etc | <b>33.</b> The Council shall have power to request for such information, documents and other records that the Council may have reasonable cause to believe to be necessary for the enforcement of the provisions of this Act.   |
| Appointment of compliance officers               | <p><b>34.</b> (1) The Council shall, for the purposes of enforcing the provisions of this Act, appoint such number of music compliance officers as the Council considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such compliance officers.</p> <p>(2) In addition to compliance officers appointed under subsection (1), any member of the Council or a police officer may perform the functions of a compliance officer under this Act.</p> <p>(3) A person appointed as a compliance officer shall hold office subject to such conditions as the Council may determine with approval of the Cabinet Secretary.</p> <p>(4) The appointment of a compliance officer under this section shall be by notice in the <i>Gazette</i> for renewable term of three years.</p>  |
| Power of entry and interrogation                 | <p><b>35.</b> (1) A compliance officer may at any reasonable time, with or without a search warrant—</p> <p>(a) enter upon any premises, vessel or vehicle for the purpose of ascertaining whether there is or has been, on or in connection with such premises, vessel or vehicle any contravention of this Act; or</p> <p>(b) seize, detain, and where applicable remove for detention any substance or article which he has reasonable cause to believe to be in violation of the provisions of this Act or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings which may arise under this Act.</p> <p>(2) Where a compliance officer seizes any work he shall in writing, notify the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.</p> |



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|  | <p>(3) If the compliance officer suspects that any person found at the premises, vessel or vehicle may provide any useful information, he or she may—</p> <ul style="list-style-type: none"> <li>(a) interrogate that person and record a statement from that person; or</li> <li>(b) demand from that person any book, document, article, object or substance which may assist in the enforcement of this Act.</li> </ul> <p>(3) Nothing in this section shall be construed as requiring a person to answer any question or give any information which may incriminate him or her.</p> <p>(4) A police officer or a compliance officer may with or without warrant, arrest any person whom the police officer or compliance officer suspects on reasonable grounds of having committed an offence under this Act and may search the person and detain the person for a maximum of twenty four hours at the nearest police station.</p> <p>(6) Before acting under this section, a compliance officer shall, if required to do so, produce his or her certificate of authority to act as a compliance officer.</p> |
| <p>Offences against law enforcement</p>          | <p><b>36.</b> Any person who-</p> <ul style="list-style-type: none"> <li>(a) willfully obstructs a compliance officer in the discharge of the compliance officer's duties;</li> <li>(b) willfully fails to comply with any requirement properly made to him by a compliance officer;</li> <li>(c) without reasonable cause fails to give to the compliance officer any assistance or information which the compliance officer may reasonably require of that person for the purpose of the performance of his duties under this Act; or</li> <li>(d) in giving any such information as is mentioned in paragraph (c), makes any statement which he knows to be false or does not believe to be true,</li> </ul> <p>shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.</p>   |
| <p>Conduct of Prosecution<br/><i>Cap. 75</i></p> | <p><b>37.</b> The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code appoint public prosecutors for the purposes of cases arising under this Act.</p>  |
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**PART VII – THE NATIONAL MUSIC FUND**

Establishment of the Fund

**38.** (1) There is established a fund to be known as the National Music Fund.

(2) The Fund shall consist of —

- (a) such sums of money as may be specifically designated for the Fund by Parliament;
- (b) such sums of money as may be received in form of donations, endowments, grants or gifts from whatever source designated for the Fund; and
- (c) such percentage of music earnings as shall be annually determined by the Council and Kenya Copyright Board.

(3) The Fund shall be managed on behalf of the Council by a board of Trustees made up of the following members —

- (a) the principal secretary responsible for matters relating to music or his representative;
- (b) the principal secretary responsible for finance or his representative;
- (c) the Chairperson of the Council or his representative;
- (d) the director of the Permanent Presidential Music Commission or his representative;
- (e) the director of the Academy or his representative;
- (f) four other Trustees appointed by the Cabinet Secretary in consultation with the Council after a competitive recruitment process; and
- (g) the director of the Fund.

(4) A person shall not be qualified to hold office as a Trustee of the Fund under subsection 3(e) if that person —

- (a) is not a Kenyan citizen;
- (b) does not hold a degree from a recognized university in Kenya;
- (c) does not have at least ten years in finance or corporate affairs;
- (d) holds office in a political party;
- (e) is a member of Parliament or a county assembly;
- (f) does not meet the requirements of Chapter six of the Constitution.

(5) The appointment of Trustees shall be by notice in the *Gazette*.

(6) A Trustee appointed under this section shall, in relation to the Fund, have the duties and obligations of a trustee, and be accountable in accordance with the provisions of the Trustees Act.

(7) The term of office of a Trustee appointed under this section shall

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|   | <p>be three years and may be renewed for a further one term of three years.</p> <p>(8) The provisions relating to the vacancy of office for members of the Council set out in section 8 shall apply <i>mutatis mutandis</i> to the vacancy of office of Trustees.</p>   |
| Objects of the Fund                       | <p><b>39.</b> (1) The objects of the Fund shall be to facilitate the promotion of artistic creativity and the general development Kenya's music industry.</p> <p>(2) Without prejudice to the generality of the foregoing, monies out of the Fund may be applied for —</p> <ul style="list-style-type: none"> <li>(a) the award of contracts, grants, scholarships, bursaries or any other award determined by the Council;</li> <li>(b) funding practitioners to enable them develop their skills and competencies;</li> <li>(c) funding music industry mentorship and capacity building initiatives;</li> <li>(d) funding music research, conferences, festivals, trade fairs and expos;</li> <li>(e) financial support for the acquisition or establishment of music industry facilities;</li> <li>(f) the development of appropriate human resource and research capacity in the areas of documentation, preservation and archiving of Kenyan music.</li> </ul> |
| Director and staff of the Fund            | <p><b>40.</b> (1) There shall be a Director of the Fund.</p> <p>(2) The provisions relating to the appointment of the Chief Executive Officer of the Council set out in section 14 shall apply <i>mutatis mutandis</i> to the appointment of the Director of the Fund.</p> <p>(3) The provisions relating to the appointment of the staff of the Council set out in section 15 shall apply <i>mutatis mutandis</i> to the appointment of staff of the Fund.</p>   |
| Functions of the Director of the Fund     | <p><b>41.</b> The Director shall be shall responsible to the board of Trustees for the day to day management of the affairs and transactions of the Fund and the exercise, discharge and performance of the statutory objectives, duties and obligations of the Board of Trustees.</p>  |
| Financial provisions relating to the Fund | <p><b>42.</b> The financial provisions set out in Part IX of this Act shall apply <i>mutatis mutandis</i> to the Fund.</p>  |
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| <b>PART VIII – THE KENYA MUSIC TALENT ACADEMY</b> |   |
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| Establishment of the Academy                      | <p><b>43.</b> (1) There is established an Academy to be known as the Kenya Music Talent Academy.</p> <p>(2) The Academy shall be managed on behalf of the Council by a board of management made up of the following members —</p> <ul style="list-style-type: none"> <li>(a) the principal secretary responsible for matters relating to music or his representative;</li> <li>(b) the principal secretary responsible for tertiary education or his representative;</li> <li>(c) the Chairperson of the Council or his representative;</li> <li>(d) the director of the Permanent Presidential Music Commission or his representative;</li> <li>(e) the director of the Fund or his representative; and</li> <li>(f) the director of the Academy .</li> </ul>  |
| Objects of the Academy                            | <p><b>44.</b> (1) The object of the Academy shall to offer training and to facilitate talent development in music.</p> <p>(2) Without prejudice to the generality of the foregoing, the Academy shall serve as the apex training agency for music and spearhead the development of musical talent by —</p> <ul style="list-style-type: none"> <li>(a) identifying and admitting talented musicians to the Academy;</li> <li>(b) offering and promoting the training in music in all aspects;</li> <li>(c) developing curriculum for use in music talent development;</li> <li>(d) setting standards and enabling implementation through the introduction of assessment and certification;</li> <li>(e) promoting the advancement of musical talent through public performances, exchange programs and other initiatives;</li> <li>(f) undertaking research innovation, creativity and outreach for the sustainable advancement of the music industry;</li> <li>(g) facilitating the conduct of performance programs;</li> <li>(h) setting and promoting conformity to music standards to govern best practices in the music industry;</li> <li>(i) promoting the use and manufacture of local musical instruments; and</li> <li>(j) promoting the education and practice of music therapy.</li> </ul> |
| Functions of the board of the Academy             | <p><b>45.</b> The board of the Academy shall —</p> <ul style="list-style-type: none"> <li>(a) manage the Academy;</li> <li>(b) take responsibility for the development and application criteria for identification and admission into the Academy for all ages and abilities;</li> <li>(c) provide resources for effective management of the activities undertaken at the Academy ;</li> </ul>  |

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|  | <p>(d) facilitate linkages with the other tertiary institutions offering music and facilitate admission of children and other persons with exceptional talent from the Academy to those tertiary institutions;</p> <p>(e) facilitate linkages with the music industry to provide opportunities and enable support for talented musicians that from the Academy ; and</p> <p>(f) provide a framework for identification of talent from both the formal and informal education system.</p>  |
| Director and staff of the Academy            | <p><b>46.</b> (1) There shall be a director of the Academy.</p> <p>(2) The provisions relating to the appointment of the Chief Executive Officer of the Council set out in section 14 shall apply <i>mutatis mutandis</i> to the appointment of the Director of the Academy.</p> <p>(3) The provisions relating to the appointment of the staff of the Council set out in section 15 shall apply <i>mutatis mutandis</i> to the appointment of staff of the Academy.</p>  |
| Functions of the director of the Academy     | <p><b>47.</b> The Director of the Academy shall be responsible to the board of the Academy for the day to day running of the affairs of the Academy.</p>  |
| Financial provisions relating to the Academy | <p><b>48.</b> The financial provisions set out in Part X of this Act shall apply <i>mutatis mutandis</i> to the Academy.</p>  |
|  | <p><b>PART IX – THE NATIONAL MUSIC TRIBUNAL</b></p>   |
| Establishment of the Tribunal                | <p><b>49.</b> (1) There is established a tribunal to be known as the National Music Tribunal.</p> <p>(2) The Tribunal shall consist of the following members appointed by the Judicial Service Commission in consultation with the Council —</p> <p>(a) a chairperson who shall be a person who is qualified to be appointed as a Judge of the High Court;</p> <p>(b) at least two members who shall —</p> <ol style="list-style-type: none"> <li>i. be advocates of the High Court of Kenya with at least seven years experience; and</li> <li>ii. have experience in legal matters relating to music or have been involved in music in any capacity;</li> </ol> <p>(c) at least two and not more than six other persons who have experience in music, in any capacity, of at least ten years.</p> |

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|   | <p>(d) The Judicial Service Commission shall, in consultation with the Council, appoint a deputy chairperson from the members of the Tribunal appointed under subsection 2(b).</p> <p>(3) The appointment of members of the Tribunal shall be by notice in the <i>Gazette</i>.</p>  |
| Term of Office                              | <p><b>50.</b> (1) The chairperson and members of the Tribunal shall hold office for a term of five years and may be reappointed for one further term of five years.</p> <p>(2) The chairperson and members of the Tribunal shall serve on part-time basis.</p>  |
| Vacancy in the office of member of Tribunal | <p><b>51.</b> (1) The office of a member of the Tribunal shall become vacant if the member —</p> <ul style="list-style-type: none"> <li>(a) resigns by giving notice in writing to the Judicial Service Commission;</li> <li>(b) is convicted of a criminal offence;</li> <li>(c) is incapacitated by reason of prolonged physical or mental illness from performing his duties;</li> <li>(d) is adjudged bankrupt;</li> <li>(e) is otherwise unable or unfit to continue serving as a member of the Tribunal;</li> <li>(f) dies;</li> <li>(g) term expires.</li> </ul>                 |
| Jurisdiction of the Tribunal                | <p><b>52.</b> The Tribunal shall determine-</p> <ul style="list-style-type: none"> <li>(a) appeals against decisions made by national music associations whose rules specifically allow for appeals to be made to the Tribunal;</li> <li>(b) other music industry disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear provided that such matters are not in the jurisdiction of the Competent Authority established under the Copyright Act; and</li> <li>(c) appeals from decisions of the Council under this Act.</li> </ul> |
| Powers of Tribunal                          | <p><b>53.</b> The Tribunal may, in determining disputes apply alternative dispute resolution methods for music industry disputes and provide expertise and assistance regarding alternative dispute resolution to the parties to a dispute.</p>   |
| Staff of the Tribunal                       | <p><b>54.</b> The Judicial Service Commission shall appoint the Secretary and such other staff of the Tribunal as are necessary for the proper functioning of the Tribunal.</p>   |
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| Tribunal Rules                 | <p><b>55.</b> The Chief Justice may in consultation with the chairperson of the Tribunal, and by notice in the Gazette, make rules governing the practice and procedure of the Tribunal having regard to the objectives of this Act.</p>   |
|                                | <p><b>PART X – FINANCIAL PROVISIONS</b></p>  |
| Funding of the Council         | <p><b>56.</b> (1) The funds of the Council shall consist of —</p> <ul style="list-style-type: none"> <li>(a) monies allocated by Parliament;</li> <li>(b) grants, gifts, donations or other endowments given to the Council;</li> <li>(c) such funds as may vest in or accrue to the Council in the performance of its functions under this Act or under any other written law;</li> <li>(d) such monies as may be allocated by the Commission on Revenue Allocation;</li> <li>(e) such monies drawn from profitable ventures and investments of all kinds undertaken by the Council;</li> <li>(f) all monies from any other source provided for, donated or loaned to the Council;</li> <li>(g) monies that may be drawn from levies, fees and royalties;</li> <li>(h) the receipts, earnings or accruals of the Council and the balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for purposes of the Council under this Act;</li> <li>(i) Any funds donated or lent to, or gift made to the Council shall be contained in the financial statements.</li> </ul> |
| Financial year of the Council. | <p><b>57.</b> (1) The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.</p> <p>(2) Notwithstanding subsection (1), the first financial year of the Council shall commence on the date on which this Act comes into operation and end on the thirtieth June of the subsequent year.</p>   |
| Annual estimates.              | <p><b>58.</b> (1) The Council shall, at least three months before the commencement of each financial year, cause to be prepared and submitted to the Cabinet Secretary an annual budget in respect of the following financial year comprising estimates of the Council's expected recurrent, maintenance, development and capital expenditure in the said financial year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditure of the Council for the financial year and in particular, shall provide for—</p> <ul style="list-style-type: none"> <li>(a) the payment of salaries, allowances and other charges in</li> </ul>  |

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|                                   | <p>respect of the officers, agents or members of staff of the Council;</p> <p>(b) the payment of pensions, gratuities and other charges in respect of retirement benefits payable to the members of staff of the Council;</p> <p>(c) the proper maintenance, repair and replacement of the equipment and other movable property of the Council; and</p> <p>(d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may determine.</p> <p>(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate, and shall be submitted to the Cabinet Secretary for approval, and once the annual estimates are approved by the Cabinet Secretary, the Council shall not increase the sum provided without the written consent of the Cabinet Secretary.</p> |
| <p>Accounts and audit</p>         | <p><b>59.</b> (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and the liabilities of the Council and shall prepare an annual statement of accounts in conformity with international accounting standards.</p> <p>(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the council in respect of that year together with—</p> <p>(a) a statement of the income and expenditure of the Council during that year; and</p> <p>(b) a statement of the assets and liabilities of the Council on the last day of that financial year.</p> <p>(3) The accounts of the Council shall be audited and reported upon by the Auditor General in accordance with the law governing public audit and management of public finances.</p>  |
|                                   | <p><b>PART XI – GENERAL PROVISIONS</b></p>  |
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| <p>Common Seal of the Council</p> | <p><b>60.</b> The Common seal of the Council shall be —</p> <p>(a) authenticated by the signature of the Chairperson or one member authorized by resolution of the Council; and</p> <p>(b) kept in such custody as the Council may direct and shall not be</p>  |



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|                                    | used except on order of the Council.   |
| Protection from personal liability | <p><b>61.</b> (1) No matter or thing done by a member, officer, employee or agent of the Council shall, if the matter or thing is done bona fide while executing the functions, powers or duties assigned by the Council, render the member, officer, employee or agent liable to any action, claim or demand whatsoever.</p> <p>(2) The provisions of subsection (1) shall not relieve the Council of any liability to pay compensation or damages to any person for an injury to the person or property or any the interests of any person adversely affected by the exercise of the powers conferred by the body in accordance with this Act or any other written law or by failure, whether wholly or partially or any works</p>                                   |
| General penalty                    | <p><b>62.</b> Any person who commits an offence under this Act for which no other penalty is provided shall upon conviction be liable to a fine of a minimum of two hundred thousand shillings and not exceeding one five hundred thousand or to imprisonment for a term not exceeding two years or both.</p>  |
| Power to make Regulations          | <p><b>63.</b> The Cabinet Secretary may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, the Cabinet Secretary may make regulations in respect of the following —</p> <ul style="list-style-type: none"> <li>(a) the terms and conditions of service for the staff of the Council;</li> <li>(b) to establish a standards of the Council;</li> <li>(c) to establish institutions and strengthen existing institutions to cater for specific aspects of the music industry as he may find appropriate;</li> <li>(d) a Code of Conduct for members of the Council;</li> <li>(e) any other matter which may be necessary or expedient in order to achieve the objectives of this Act.</li> </ul> |
| Transition                         | <p><b>64.</b> The Cabinet Secretary may appoint an interim Board of the Council to be known as the Interim Management Committee with a Secretariat to undertake the functions of the Council for a maximum period of one year or until a substantive Board is put in place, whichever is earlier.</p>  |

## **FIRST SCHEDULE**

### **Provisions as to the Conduct of business and affairs of the Board of the Council**

1. The Board shall meet not less than four times in any financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.
2. A meeting of the Board shall be held on such date and at such time as the Board shall decide, or in the absence of such a decision, if the Chairperson decides that a meeting is necessary, on a date and at a time determined by the Chairperson.
3. Unless otherwise decided, by two-thirds of the majority of the members of the Board, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Council.
4. The quorum of the Board shall be fifty-one percent of the members of the Board.
5. The Chairperson shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
6. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a second or casting vote.
7. Any member of the Board who has a direct or indirect pecuniary interest in relation to a contract or arrangement that has been or is proposed to be made, shall as soon as practicable give written notice to the Board of that fact specifying the nature of their interest and shall be excluded from the deliberations on the matter.
8. Minutes of the proceedings of every meeting of the Board and of every committee of the Board shall be regularly entered in books kept for that purpose by the chief executive officer.
9. Where the office of a member other than an *ex officio* becomes vacant, the vacancy may with the approval of the Cabinet Secretary be filled through the majority vote of the members for the remainder of the term.

10. No act or decision or proceedings of the Council shall be invalid on account of a vacancy in the membership or on account of the appointment of a member of the Council being defective.

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